

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.10.2016

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CIVIL REVISION PETITION (PD) No.1737 of 2013
and
M.P.No.1 of 2013

Asiatec Auto Forge
Rep. by its
Proprietor Mr.V.Prakash,
S/o. Venkatesan,
Plot No.175,
SIDCO Industrial Estate,
Thirumalisai,
Prayampattu Village,
Chennai 602 107.

.. Petitioner

VS.

1. Kannappan @ Munusamy

2. Devaraj

3. Murugan

4. Pushpa

5. Elumalai

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 07.11.2012 passed in I.A.No.848 of 2012 in O.S.No.157 of 2007 on the file of the learned Principal District Munsif, Poonamallee.

For Petitioner ... Mr.S.Ganesh

For 1st
Respondent ... Mr.A.Palaniappan

For Respondents
2 to 5 ... No Appearance

ORDER

This civil revision petition is filed against the fair and decretal order dated 07.11.2012 passed in I.A.No.848 of 2012 in O.S.No.157 of 2007 on the file of the learned Principal District Munsif, Poonamallee.

2. The revision petitioner/plaintiff filed a suit in O.S.No.157 of 2007 seeking permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property, wherein the first defendant filed a written statement. After five years of filing of the suit, the revision petitioner filed an interlocutory application in I.A.No.848 of 2012 in O.S.No.157 of 2007 seeking permission to amend the prayer in the plaint as well as some portion of the pleadings. The first respondent herein filed counter in the said application. The learned trial Judge, after considering the facts and circumstances of the case, dismissed I.A.No.848 of 2012

holding that the revision petitioner is not entitled to claim the relief of mandatory injunction as against the adjoining owner of the suit property because in the suit filed by him, he has claimed that the defendants 1 to 4 started to put up construction and they have not obtained plan approval for their construction and they have not left any space between the suit property and their construction was not as per the District Municipalities Act. When the construction made by the defendants 1 to 4 is an unauthorised construction without following the rules and regulations, the plaintiff is not entitled to claim the relief of mandatory injunction, even though the relief of mandatory injunction can be claimed within three years after completion of construction. If the constructions are in violation of the District Municipalities Act, it is for the Municipality to initiate action against the defendants. As against the dismissal order dated 07.11.2012, the present civil revision petition has been filed.

3. The learned counsel for the revision petitioner contended that the original prayer sought for in the suit is to grant permanent injunction restraining the defendants 1 to 4, their men, agents, servants and others from putting up any manner of further construction abutting the suit property without leaving space and without obtaining

plan approval and following the rules and regulations. He further contended that the revision petitioner is running a company after obtaining necessary permission from the Tamil Nadu Pollution Control Board. The village site is situated on the Eastern side of the suit property, which is lying vacant. At the time of filing of the suit, the defendants started construction adjacent to the compound wall of the suit property and was in progress. During pendency of the suit, construction was completed and therefore, it is necessary to amend the prayer with appropriate relief enabling the trial Court to adjudicate the suit effectively.

4. The learned counsel for the revision petitioner further contended that no prejudice would be caused if the prayer is amended and the amendment of the pleadings and the prayer is the right of the revision petitioner and the amendment sought for is within the ambit of law and the parties are left open to establish their claim at the time of adjudication of the suit. Hence, he has prayed to set aside the order passed by the trial Court and to allow the civil revision petition.

5. The learned counsel for the respondents contended that if the amendment is permitted, the same will change the character of the

suit and the application for amendment is a time barred one, which cannot be entertained. Further, it is contended that the revision petitioner wantonly has not made out an appropriate prayer at the time of filing of the suit, though the revision petitioner has the knowledge about the construction by the defendants 1 to 4. But, after a lapse of five years of filing of the suit, the revision petitioner has filed this application to prolong the suit. Therefore, this civil revision petition is liable to be dismissed.

6. The arguments of the respective counsel are considered. The fact remains that, in the suit, originally, the prayer is made out for permanent injunction restraining the defendants 1 to 4 from putting up further construction abutting the suit property without leaving space and without obtaining plan approval and following the rules and regulations. Now, an application has been filed to amend the prayer due to the improvements made in the construction during pendency of the suit. Therefore, filing of an amendment application is necessary and inevitable. In the absence of such amendment of prayer, there is no possibility of effective adjudication in the suit. That apart, the findings arrived at by the learned trial Judge that the defendants 1 to 4 put up unauthorised construction without following the rules and

regulations, which is a conclusive finding and if the application is not allowed, it would affect the character of the suit. Moreover, the trial Court, while adjudicating the application, could not adjudicate the merits of the main suit and it has to be decided during the time of trial and after adducing evidence. Further, the trial Court came to the conclusion that if the respondents make construction in violation of the District Municipalities Act, it is for the Municipality to initiate action against the respondents/defendants. Such a finding arrived at by the trial Court is perverse and cannot be sustained. Hence, the order passed by the trial Court in I.A.No.848 of 2012 is infirm and unsustainable. The observations made by the trial Court in the order dated 7.11.2012 in I.A.No.848 of 2012 should not affect the merits of the suit. Therefore, this Court is inclined to set aside the order passed in I.A.No.848 of 2012.

7. It is made clear that the respective parties to the suit are at liberty to raise all their objections and legal points at the time of adjudication of the suit and they shall raise all their contentions before the trial Court by adducing evidence and marking relevant documents.

8. In the result, the order dated 7.11.2012 passed in I.A.No.848 of 2012 in O.S.No.157 2007 is set aside and the civil revision petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

9. At the time of concluding the order, the learned counsel for the first respondent submitted that the petitioner is prolonging the adjudication of the suit and hence, he requested that a direction may be given to the trial Court for speedy disposal of the suit.

10. Considering the request made by the learned counsel for the first respondent, the learned District Munsif, Poonamallee is directed to take up the suit filed in O.S.No.157 of 2007 in the yearwise seniority and dispose of the same as early as possible.

07.10.2016

Index:Yes/No
Internet:Yes/No

To

The learned District Munsif
Poonamallee.

S.M.SUBRAMANIAM.J

cla

C.R.P.(PD)No.1737 of 2013

07.10.2016

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